

Summary

The subject of the thesis is financial assistance for the acquisition of a company's shares. In Polish law such transactions are regulated in Article 345 of the Code of Commercial Partnerships and Companies (CCPC). It states that a public limited company (*spółka akcyjna*) may directly or indirectly provide financial assistance for the acquisition of its own shares by means of, amongst others, a loan, advance payment or guarantee, subject to the conditions specified in that article.

The dissertation seeks to clarify the meaning of financial assistance, identify the uncertainties and shortcomings inherent in the current regime and suggest the legislative changes. It argues that Article 345 § 1 CCPC is too widely drawn and should be aligned more closely with Article 64 of the EU Directive 2017/1132. The analysis proceeds as follows.

Chapter 1 provides a comparative snapshot of foreign provisions on financial assistance, vis. the English, German and French company acts and the EU Directive 2017/1132.

Chapter 2 considers the methodology of historical interpretation of EU law and, accordingly, gives a historical perspective for the rationale for Article 64 of the Directive and Article 345 CCPC. It ascertains i.a. whether and to what extent, without prejudice to the autonomy of EU law, the analysis of these provisions can draw upon the comparative experience of English law on financial assistance.

Chapter 3 goes on to explain the rationale for the prohibition on financial assistance. Reference is made to the doctrine of capital maintenance, rules for company takeovers and corporate governance. The aim is to highlight the interplay between these rules and Article 345 CCPC.

Chapter 4 seeks to clarify the meaning of financial assistance, i.a. by analysing the constituent components of Article 345 § 1 CCPC, such as the “purpose of transaction”. It considers the uncertainties implied by the vague character of this provision and examines different types of transactions that potentially meet the criteria of financial assistance. Chapter 4 also covers financial assistance in the context of groups of companies.

Chapter 5 focuses on a “merger leveraged buyout” transaction (MLBO), which involves a special purpose company/vehicle (SPV) raising debt to acquire a majority shareholding in a target company, which is subsequently merged with SPV. I argue that the MLBOs may infringe on the rules of financial assistance insofar as they adversely affect the capital of the target company.

Chapter 6 covers the procedure for the giving of financial assistance, as set out in Article 345 § 2 – 7 CCPC. It examines i.a. the obligations to create a capital reserve, to ensure a fair price for the shares, to pass a resolution at the shareholders’ meeting, to investigate the financial standing of the beneficiary of financial assistance and to prepare a report by the management board.

Chapter 7 describes the statutory exceptions from the above procedure, i.e. the transactions carried out by banks and other financial institutions in the normal course of business, and the transactions effected with a view to acquisition of shares by or for the company's employees or the employees of an associate company.

Chapter 8 describes the consequences of unlawful financial assistance, e.g. the invalidity of transactions, and claims against the company directors.

The dissertation concludes with key findings and outlines the proposals for legislative changes.